LEMBAGA PEMBANGUNAN INDUSTRI PEMBINAAN MALAYSIA

v.

KONSORTIUM JGC CORPORATION & ORS (SUED AS INCORPORATED PARTNERSHIP)

HIGH COURT MALAYA, KUALA LUMPUR
HAMID SULTAN ABU BACKER J
[SUIT NO: D5-22-1444-2006]
25 NOVEMBER 2010

CIVIL PROCEDURE: *Disposal of action without trial - Disposal of case on point of law - Plaintiff claims for levy - Whether levy could be imposed on construction works outside Malaysia - Whether construction works under s. 34 Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 includes non-construction works - Whether words under said Act to be given literal meaning*

STATUTORY INTERPRETATION: *Construction of statutes - Rules of construction - Plaintiff claims for levy for offshore and non-construction works by defendants - Whether allowed under Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 - Whether Act encompasses extra territorial jurisdiction - Whether offshore and non-construction works fall within ambit of the Act - Words used in Act were clear - Whether words to be given its literal meaning - Whether Act implicitly recognizes non-construction works not subject to levy - Whether purposive approach advocated in s. 17A Interpretation Acts 1948 and 1967 relevant*

The defendants, a consortium, was awarded a construction contract which of consists of offshore and onshore works ('the project'). The plaintiff, a regulatory body, imposed a levy on the defendants pursuant to s. 34 Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 ('the Act'). The defendants, however, paid only a portion of the levy. They contended that offshore works and non-construction works under the project did not attract levy. The plaintiff brought this action to claim for the full amount of the levy, and the defendants counterclaimed for declaratory orders to negate the plaintiff's claim. Both parties agreed for the issues to be determined pursuant to O. 14A Rules of the High Court 1980. The issues to be determined were (i)

whether a levy could be imposed on construction works outside Malaysia; and (ii) whether construction works under the s. 34 of the Act would include non-construction works such as engineering, procurement, supervision, management and other ancillary services.

Held (dismissing the plaintiff's claim):

(1) Section 1(2) of the Act clearly states that the Act shall be applicable in Malaysia and additionally, the other provisions of the Act does not encompass extra territorial jurisdiction. Therefore, any forms of works done outside Malaysia would not fall within the ambit of the Act. (para 4)

(2) It is trite to the rule of interpretation, that where the words of a statute are clear, they have to be applied literally to give effect to the plain words. In this instance, the plain reading of ss. 1(2), 2 and 34(8) of the Act did not support the plaintiff's proposition that offshore works and non-construction works were within the provisions of the Act. (para 4)

(3) Regulation 6 of the Construction Industry (Collection of Levy) Regulations 1996 ('the Regulation') provides for factors to be considered in determining the amount of the levy payable. The Act and the Regulation implicitly recognizes that there would be contracts of which the construction works form only a part of it, and that the non-construction works under the said contract would not be subject to levy. The purposive interpretation as advocated in s. 17A Interpretation Acts 1948 and 1967 was adopted. Additionally, this negates the argument that the levy should be based solely on the contract price or award. (para 4)

(4) The plaintiff had construed the Act wrongly and had imposed an incorrect levy amount on the defendants. The definition of construction works under the Act did not include offshore works. Furthermore, the levy under s. 34 of the Act was restricted to the construction works under the said contract thereby excluding non-construction works such as engineering, procurement, supervision, management and other ancillary services. (para 4)

[Defendants at liberty to raise counterclaim in the event plaintiff raises fresh or amended levy.]

Case(s) referred to:

All Malayan Estates Staff Union v. Rajasegaran & Ors [2006] 4 CLJ 195 FC ***(refd)***

Canada Sugar Refining Co v. R [1898] AC 735 ***(refd)***

Ipoh Garden Sdn Bhd v. Ismail Mahyuddin Enterprise Sdn Bhd [1975] 1 LNS 66 HC ***(refd)***

Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd AIR [1962] SC 1543 ***(refd)***

Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd [2004] 2 CLJ 265 FC ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Pinner v. Everett [1969] 1 WLR 1266 ***(refd)***

Legislation referred to:

Construction Industry (Collection of Levy) Regulations 1996, reg. 6

Interpretation Acts 1948 and 1967, s. 17A

Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994, ss. 1(2), 2, 34(5), (8)

Rules of the High Court 1980, O. 14A

Other source(s) referred to:

Bennion, *Statutory Interpretation,* 4th edn, Part V, pp 275, 276

Craies on Legislation, 8th edn, p 566

For the plaintiff - Suhairi Abd Karim (Shamsul Bahari with him); M/s Dasuki & Co

For the defendant - Lim Chee Wee (Ruth Garnet Maran with him); M/s Skrine

Reported by Melinda Robert

JUDGMENT

Hamid Sultan Abu Backer J:

[1] This is my judgment in respect of the plaintiff's claim for levy for construction work against the defendant who had secured construction work for few billion Malaysian Ringgits. The defendant has also placed a counterclaim to seek declaratory orders to negate the plaintiff's claim. The matter was fixed for full trial on 23 November 2010 to 25 November 2010. However, during case management stage both parties agreed that the issues can be determined pursuant to O. 14A of Rules of High Court 1980 and in consequence the plaintiff has filed encl. 51, the subject matter of this judgment. With the consent of the plaintiff the defendants have also set out in encl. 56 exh. K2 the issues which need to be determined and it reads as follows:

A 1. Whether the plaintiff has construed the CIDB Act and the relevant documents wrongly and determined and imposed an incorrect levy amount (according to reg. 6 of the Construction Industry (Collection of Levy) Regulations 1996), in particular:

B (i) Whether the Offshore Work falls outside the definition of "construction works" as found in s. 2 of the CIDB Act (and hence are outside the ambit of s. 34) given that such works are to be performed outside of Malaysia and that the CIDB Act only provides that it shall apply throughout C Malaysia.

(ii) Whether the levy under s. 34 of the CIDB Act is restricted to the construction works component of the said contract, and hence excludes non-construction works such as engineering, procurement, supervision, management, and D other ancillary services.

(iii) Whether the levy under s. 34 of the CIDB Act excludes non-construction works performed offshore such as engineering, procurement, supervision, management, E equipment and materials supplied on an FOB basis, and other ancillary services.

(iv) Whether or not the contract is in fact a supply contract coupled with a construction contract, which was F consolidated into one contract for convenience and efficiency; and if so whether the supply contract should be subject to a levy under the CIDB Act.

2. Whether the defendant has fulfilled its obligations under the CIDB Act in respect of the contract.

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3. In the event that the plaintiff is entitled to judgment, whether the plaintiff is entitled to interest notwithstanding that the CIDB Act does not provide for interest and if so, on which sum, at what rate and from what date.

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[2] In essence, the real issue is whether a levy can be imposed under the Act on (i) construction works which was done outside Malaysia (ii) whether construction works under the Act will include non-construction works such as engineering, procurement, I supervision, management and other ancillary services.

[3] In the instant case the levy was raised and the defendants have requested extension of time to settle. And subsequently the defendant had only paid a part of the levy and objected to the balance on the grounds that the plaintiff cannot claim levy for works done outside Malaysia, inclusive of the non-construction works. To this the plaintiff takes strong objections. To put it crudely on the grounds "you agreed to pay and you must pay". And submits that admission amounts to acknowledgment of debt.

[4] Brief Facts

1. The plaintiff is a statutory body known as Lembaga Pembangunan Industri Pembinaan Malaysia or Construction Industry Development Malaysia incorporated under the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 (CIDB Act). In essence it is a regulatory body for construction Industry in Malaysia with related powers to issue license, collect levy for construction works, impose fine for breach etc;

2. The defendant is a consortium consisting of foreign and local companies, which was awarded a contract worth USD 1,481,254,000 plus Euro 59,640,000 to participate in Malaysia LNG Tiga Plant Project at Bintulu through the auspices of PETRONAS. The work consists of offshore and onshore works. The defendant's contention is that offshore work and non-construction works cannot attract levy. The defendant's contention is supported by PETRONAS, which can be garnered from various letters exhibited.

3. It is not in dispute that the plaintiff knew about the consortium, and the nature of work and the scope of the work and the relevant particulars of the consortium members, before allowing the defendants to register as contractor. Subsequently the plaintiff imposed a levy of RM13,129,934.05 and informed the defendant the liability for payment of levy under the CIDB Act was 5 January 2001, and had informed that the failure to make payment will attract an offence under s. 34(5) of CIDB Act. The said notification of levy in form CIDB L2/96, the plaintiff says was received by the defendant without protest. It is the contention of the plaintiff that levy was payable upon registration of the contract notwithstanding the defendant was given an extension of time to pay the levy.

4. The defendant after having obtained the extension of time did not pay the levy but only paid a sum of RM2,802,130.21 and for the first time split the levy into two parts, namely disputed portion and undisputed portion through their agent M/s Dollite Kassim Chan, by a letter dated 5 February 2001. The relevant part of the letter reads as follows:

> Our abovenamed client is of the view that the levy imposed amounting to RM13,129,934.05 as per the aforesaid Form CIDB L2/96 is excessive and will be in contact with you on the matter. Meanwhile, we enclose a banker's cheque issued by RHB Bank Berhad in the amount 2,802,130.21 as payment towards the undisputed portion of the levy imposed.

On this issue the learned counsel for the plaintiff submits as follows:

> Thus, the defendant not only failed to honour commitment but went back on its word and at the same times abused the plaintiff's indulgence in approving its application for an enlargement of time to postpone the date of liability.

5. I have read the application, affidavits and submissions of the parties in detail. Learned counsels have addressed the relevant issues in detail and I do not wish to repeat the same save to deal with the core issues. I take the view the defendants' argument has merits. My reasons inter alia are as follows:

(i) Section 1(2) of the CIDB Act clearly states that the "Act shall apply throughout Malaysia. The other provisions of the Act also does not encompass extra territorial jurisdiction. *Prima facie* any form of works done outside Malaysia may not be subject to the provision of the CIDB Act. Support for the proposition can be found in a number of cases. Learned authors of Bennion, *Statutory Interpretation*, 4th edn. Part V at p. 275 say:

> (1) Although an enactment may be expressed in general terms, the area for which it is law must exclude territories over which Parliament lacks jurisdiction. It also excludes territories for which Parliament did not in that enactment intend to legislate.

At p. 276 it is stated:

> The 'extent' of an Act is the geographical area throughout which it is law. The 'extent' of an Act consists of the territory or territories throughout which, so long as it is operative, the Act forms part of the current body of law or *corpus juris*. An Act may specify its extent expressly, or leave it to be inferred. Such inferences arise from the factors governing implied meaning, namely the words of the Act, the context of the Act and the operation of general legal rules. One such rule provides that, in the absence of any contrary indication, an Act is taken to extend throughout the United Kingdom but not beyond.

There was no answer by the plaintiff to this part of the submission by the defendant. In essence, there is generally a presumption in favour of solely territorial jurisdiction (and hence against extra-territorial jurisdiction) unless express provisions are made in the statute.

(ii) In addition, 'construction works' is specifically defined in s. 2 of the CIDB Act, and states as follows:

> "Construction works" means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of:
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> (a) any building, erection, edifice, structure, wall, fence or chimney, whether constructed wholly or partly above or below ground level;
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> (b) any road, harbor works, railway, cableway, canal or aerodrome;
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> (c) any drainage, irrigation or river control works;
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> (d) any electrical, mechanical, water, gas, petrochemical or telecommunication works; or
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> (e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation works,
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> And includes any works which form an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping.

A And s. 34(8) of CIDB Act defines contract sum as "the consideration for a contract in respect of any construction works." The plain reading of s. 1(2), 2 and 34(8) does not support the proposition of the plaintiff to say offshore works and/or non-construction works are also made
B inclusive. It is trite that the rule of interpretation is that where the words of a statute are clear, they have to be applied literally to give effect to the plain words and where necessary the rule of harmonious construction must be strictly adhered to. Support for the proposition is found in
C a number of cases.

(a) In *Pinner v. Everett* [1969] 1 WLR 1266, Lord Reid observed at p. 1273 as follows:

> In determining the meaning of any word or phrase in
D a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute. It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature
E that it is proper to look for some other possible meaning of the word or phrase.

(b) In *Canada Sugar Refining Co. v. R* [1898] AC 735, Lord Davey stated:

F > Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.

G (c) The rule of harmonious construction in relation to sub-sections was addressed in *Madanlal Fakirchand Dudhediya v. Shree Changdeo Sugar Mills Ltd.* AIR [1962] SC 1543, where Gajendragadkar J held:

H > The sub-sections must be read as parts of an integral whole and as being interdependent, an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy.

(iii) Further, reg. 6 of the Construction Industry (Collection of
I Levy) Regulations 1996 states:

Regulation 6: Determination of the amount of levy payable

(1) For the purpose of determining the amount of levy payable by the registered contractor, the Lembaga shall determine the contract sum of the construction works.

(2) In determining the contract sum, the Lembaga may take into consideration the following:

(a) the consideration in respect of any construction works contained in the letter of acceptance, letter of award or any document that constitutes acceptance in relation to construction works;

(b) the consideration in respect of any construction works in the contract which is signed by the parties thereto; or

(c) the particulars and information in respect of the consideration relating to the execution of any contract on any construction works contained in any relevant document.

(3) A contract sum of above five hundred thousand ringgit in respect of any construction works that is derived from or constitutes the integral part of a contract for which a levy has already been paid shall not be subjected to imposition of a further levy.

(4) If the Lembaga requires any further particulars, information or document so as to enable the Lembaga to determine the amount of levy payable by the registered contractor, the Lembaga may require the registered contractor to supply by the particulars, information or document or to appear in person or by any person authorised in writing appear to appear on his behalf before the Lembaga or any committee established by the Lembaga.

This part of the regulations demolishes the purported argument of the plaintiff that there is no room in law to negotiate and/or determine upon consultation with the defendant to determine the levy. In short this provision negates the argument that levy must be exactly based on the contract price or award etc. There is much merit in the submission of the defendants that to ascertain the

A "contract sum of the construction works" the CIDB Act and Regulations implicitly recognizes that there will be contracts of which construction works form only a part, and further recognize that the "non-construction works" portions of such contracts will not be subject to the levy. B In this respect the purposive interpretation as advocated in s. 17A of the Interpretation Acts 1948 and 1967 becomes relevant.

(a) In *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337 it was stated: C

> Having laid out the parameters, let us proceed with the law on this issue. Section 17A of the Interpretation Acts 1948 and 1967 requires the court to apply the purposive approach in the interpretation of any D provision of an Act. We are of the view that the relevant statutes, especially the PDA call for a purposive and literal construction which is one which follows the literal meaning of the enactment where that meaning is in accordance with the legislative purpose and applies where the literal meaning is clear and E reflects the purposes of the enactment (see *Foo Loke Ying & Anor v. Television-Broadcasts Ltd & Ors* [1985] 2 MLJ 35 at p 43). With regard to seeking the intention of Parliament the correct approach is to ascertain the meaning of the words employed by Parliament rather F than the intention of Parliament (see *Muhammed bin Hassan v. Public Prosecutor* [1998] 2 MLJ 273 at p 289).

(b) The Federal Court in *All Malayan Estates Staff Union v. Rajasegaran & Ors* [2006] 4 CLJ 195 cited *Craies on Legislation* (8th edn) at p. 566 as follows: G

> (1) Legislation is always to be understood first in accordance with its plain meaning.
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> (2) Where the plain meaning is in doubt, the courts will H start the process of construction by attempting to discover, from the provisions enacted, the broad purpose of the legislation.
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> (3) Where a particular reading would advance the I purpose identified, and would do no violence to the plain meaning of the provisions enacted, the courts will be prepared to adopt that reading.

(4) Where a particular reading would advance the purpose identified but would strain the plain meaning of the provisions enacted, the result will depend on the context and, in particular, on a balance of the clarity of the purpose identified and the degree of strain on the language.

(5) Where the courts conclude that the underlying purpose of the legislation is insufficiently plain, or cannot be advanced without any unacceptable degree of violence to the language used, they will be obliged, however regretfully in the circumstances of a particular case, to leave to the legislature the task of extending or modifying the legislation.

The choice prescribed in s. 17A of '... a construction that would promote the purpose or object underlying the Act ... shall be preferred to a construction that would not promote that purpose or object ...' can only arise when the meaning of a statutory provision is not plain and is ambiguous. If, therefore, the language of a provision is plain and unambiguous s. 17A will have no application as the question [*108] of another meaning will not arise. Thus, it is only when a provision is capable of bearing two or more different meanings can s. 17A be resorted to in order to determine the one that will promote the purpose or object of the provision. Such an exercise must be undertaken without doing any violence to the plain meaning of the provision. This is a legislative recognition of the purposive approach and is in line with the current trend in statutory interpretation. The principles set out in the preceding paragraphs will therefore be relevant to the operation of s. 17A.

(iv) It must be emphasized that after the definition of "construction works" in s. 2 of CIDB Act the following explanatory words are included "any works which form an integral part of, or are preparatory to or temporary for the works described in paras. (a) to (e), including site clearance, soil investigation and improvement, earth-moving, excavation, laying of foundation, site restoration and landscaping."

By no stretch of imagination can one say that this will include offshore works or non-construction works. In this context statutory construction relation to *"Noscitur a sociis"* ie, the principle that a statutory term is recognized by its associated words becomes relevant. The *Noscitur a sociis* was considered in the High Court case of *Ipoh Garden Sdn Bhd v. Ismail Mahyuddin Enterprise Sdn Bhd* [1975] 1 LNS 66, Abdoolcader J (as he then was) had this to say:

> It is a fundamental rule in the construction of statutes that associated words *(noscitur a sociis)* explain and limit each other. The meaning of a doubtful word or phrase in a statute may be ascertained by a consideration of the company in which it is found and the meaning of the words which are associated with it. The rule *"noscitur a sociis"* is frequently applied to ascertain the meaning of a word and consequently the intention of the legislature by reference to the context, and by considering whether the word in question and the surrounding words are, in fact, *ejusdem generis*, and referable to the same subject-matter. Especially must it be remembered that the sense and meaning of the law can be collected only by comparing one part with another and by viewing all the parts together as one whole, and not one part only by itself.

(v) The plaintiff's argument that "you agreed to pay and you must pay" cannot apply to statute which imposes a pecuniary burden on the defendant like a taxing statute. In this case a levy. Even if the tax or levy is paid the law may permit for a refund, if there is no liability to pay under the law. It is well settled principle of law that the language of a statute imposing a tax, duty or charge must receive a strict construction in the sense that there is no room for any intendment, and regard must be had to the clear meaning of the words.

In the Federal Court case of *Palm Oil Research and Development Board Malaysia & Anor v. Premium Vegetable Oils Sdn Bhd* [2004] 2 CLJ 265, Steve Shim CJ (Sabah & Sarawak) (as he then was) said:

> Now, the Court of Appeal, in the present case, had expressly held that the provisions of a taxing statute should be construed strictly without regard to the purpose, object or intent of the statute, relying, quite obviously, on the [*108] Supreme Court case of *National Land Finance Co-*

operative Society Ltd v. Director General of Inland Revenue [1994] 1 MLJ 99 when Gunn Chit Tuan CJ (Malaya) said:

> There are ample authorities to show that the Courts have refused to adopt a construction of a taxing statute which would impose liability when doubt exists. In *Re Micklewait*, it was held that a subject was not to be taxed without clear words. We realize that revenue from taxation is essential to enable the Government to administer the country and that Courts should help in the collection of taxes whilst remaining fair to tax payers. Nevertheless, we should remind ourselves of the principle of strict interpretation as stated by Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* ... It has been said by the Judicial Committee in *Oriental Bank Corp v. Wright* that the intention to impose a charge upon a subject must be shown by clear and unambiguous language.

[14] With respect, the principle of strict interpretation of statutes enunciated by Rowlatt J could not be regarded as the *locus classicus* on the issue. Indeed as long ago as 1899, Lord Russell of Killowen CJ took a different approach in *AG v. Carlton Bank* [1899] 2 QB 158, when he said *inter alia*:

> I see no reason why special canons of construction should be applied to any Act of Parliament and I know of no authority for saying that a taxing Act is to be construed differently from any other Act. The duty of a court is, in my opinion, in all cases the same; whether the Act to be construed relates to taxation or any other subject, *viz* to give effect to the intention of the legislature.

[15] In *Luke v. IRC* [1963] AC 557, Lord Reid in the House of Lords, echoed similar views. And much later, Lord Wilberforce expanded the principle in *WT Ramsay Ltd v. Inland Revenue Commission* [1982] AC 300 when he said as follows:

> A subject is only to be taxed on clear words, not on 'intendment' or on the 'equity' of an Act ... What are 'clear words' is to be ascertained on normal principles; these do not confine the courts to literal

> interpretation. They may, indeed should, be considered in the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded ...

[16] This is known as the *Ramsay* principle. While clear words are needed before a tax can be imposed, what those words are would be interpreted in line with the purposive approach. Undoubtedly, in the United Kingdom, there is currently a more pronounced shift from the strict literal interpretation of a taxing statute. The *Ramsay* principle of statutory interpretation seems to have entrenched itself (see *Pepper (Inspector of Taxes) v. Hart* [1993] AC 593). In Malaysia, that principle should apply and it must be applied in consonance with s. 17A of the Interpretation Acts 1948/1967 which stipulates:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

It is pertinent to note that s. 17A was a recent amendment under the Interpretation (Amendment) Act 1997 (Act A996) and became effective on 25 July 1997. This would be after the National Land Finance Co-operative. In my view, the law is now clear beyond doubt. Section 17A above enjoins the purposive approach to statutory interpretation. This applies to all statutes including taxing statutes. That answers the second question posed.

Further, Parliament *via* s. 17A of the Interpretation Acts 1948 and 1967 requires the court to adopt a purposive approach. That section reads:

> In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

So, there is no doubt that even a taxing statute must be given a purposive approach. But that is quite different from saying, as learned counsel for the appellant is saying, that a taxing or revenue law statute may be read so as to

confer power upon a member of the administration to collect a tax when there is neither an identification of the taxpayer nor conferment of a power to make subsidiary legislation in that behalf. If this court were to accept the argument [*129] of counsel for the appellant, then we would not be promoting the purpose or object of the 1979 Act but be defeating it. For, in such event we would, through unauthorised legislative power, be re-writing statute.

In my judgment s. 17A has no impact upon the well established guidelines applied by courts from time immemorial when interpreting a taxing statute. Section 17A and these guidelines co-exist harmoniously for they operate in entirely different spheres when aiding a court in the exercise of its interpretive jurisdiction. The correct approach to be adopted by a court when interpreting a taxing statute is that set out in the advice of the Privy Council delivered by Lord Donovan in *Mangin v. Inland Revenue Commissioner* [1971] AC 739:

First, the words are to be given their ordinary meaning. They are not to be given some other meaning simply because their object is to frustrate legitimate tax avoidance devices. As Turner J said in his (*albeit* dissenting) judgment in *Marx v. Inland Revenue Commissioner* [1970] NZLR 182 at 208, moral precepts are not applicable to the interpretation of revenue statutes.

Secondly, '... one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption so to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used'. (Per Rowlatt J in *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64 at 71, approved by Viscount Simons LC in *Canadian Eagle Oil Co Ltd v. Regeim* [1945] 2 All ER 499, [1946] AC 119).

Thirdly, the object of the construction of a statute being to ascertain the will of the legislature, it may be presumed that neither injustice nor absurdity was intended. If therefore a literal interpretation would produce such a result, and the language admits of an interpretation which would avoid it, then such an interpretation may be adopted.

A Fourthly, the history of an enactment and the reasons which led to its being passed may be used as an aid to its construction.

In my respectful view, s. 17A of the Interpretation Acts 1948 and 1967 neatly fits into and is complementary with the third principle in the judgment of Lord Donovan. Hence, the governing principle is this. When construing a taxing or other statute, the sole function of the court is to discover the true intention of Parliament. In that process, the court is under a duty to adopt an approach that produces neither injustice nor absurdity: in other words, an approach that promotes the purpose or object underlying the particular statute albeit that such purpose or object is not expressly set out therein. Imposing a tax by means of subsidiary legislation on a person not identified in the parent Act produces an absurd and unjust result and therefore does not promote its purpose or object.

(vi) After having given much consideration to the submission of the plaintiff I agree with the defendant as follows:

(a) That the plaintiff has construed the CIDB Act and the relevant documents wrongly and determined and imposed an incorrect levy amount (according to Regulation 6 of the Construction Industry (Collection of Levy) Regulations 1996), in particular:

(i) The Offshore Work falls outside the definition of "construction works" as found in Section 2 of the CIDB Act (and hence are outside the ambit of section 34) given that such works are to be performed outside of Malaysia and that the CIDB Act only provides that it shall apply throughout Malaysia.

(ii) The levy under Section 34 of the CIDB Act is restricted to the construction works component of the said Contract, and hence excludes non-construction works such as engineering, procurement, supervision. Management, and other ancillary services.

(iii) The levy under Section 34 of the CIDB Act excludes non-construction works performed offshore such as engineering, procurement, supervision, management, equipment and materials supplied on an FOB basis, and other ancillary services.

(iv) The Contract is in fact a supply contract coupled with a construction contract, which were consolidated into one contract for convenience and efficiency; and if so whether the supply contract should be subject to a levy under the CIDB Act.

6. In reference to the plaintiff's statement of claim I do not find any merits in granting declaratory prayers (1) and (2) as the law is clear on these issues and the manner it has to be dealt with. In respect of the prayer (3) and (4) I take the view no orders should be made at this stage as the levy has been calculated on a misconceived basis and in consequence the plaintiff ought to have the liberty to file an action to claim the levy according to law in the event the defendant refuses to pay. For this reason I also take the view the defendants' counterclaim ought not be entertained at this stage and the defendants be given the liberty to raise the same in the event the plaintiff raises a fresh levy and or amended levy etc; as the case may be. Both parties have agreed to this part of the decision.

7. The facts of the case warrants that no order as to costs to be made.

I hereby order so.